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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

STATEMENT AS TO JURISDICTION

OPINION BELOW

The opinion of the District Court (Picard J.) dismissing the indictment has not been reported. A copy is annexed hereto as an Appendix, *infra*, pp. 17–32.

JURISDICTION

On February 8, 1956, the District Court for the Eastern District of Michigan entered an order dismissing the indictment on the ground that it did not charge offenses under 18 U. S. C. 610

(App., *infra* pp. 32–33). A notice of appeal to this Court was filed in the District Court on February 20, 1956. The jurisdiction of this Court to review on direct appeal an order dismissing an indictment, based on a construction of the statute on which the indictment is founded, is conferred by 18 U. S. C. 3731.

STATUTE INVOLVED

18 U. S. C. 610 provides:

> It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.
>
> Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be

fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, * * * in violation of this section, shall be fined not more than $1,000 or imprisoned for not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

QUESTION PRESENTED

Whether offenses under 18 U. S. C. 610 are charged in an indictment, each count of which alleges that on a specified date the defendant labor union made an expenditure of a specified sum from its general treasury fund, consisting of dues paid by members of the union, to defray the expenses of a particular political television broadcast sponsored by the defendant union over a commercial television station in which the defendant had no interest, which broadcast was intended to influence the electorate generally

and urged and endorsed the election of certain candidates for United States Senator and Representative in Congress in the election held in Michigan in 1954.

STATEMENT

The indictment charged four violations of 18 U. S. C. 610, in that the defendant, a labor organization as defined in the statute, did knowingly and unlawfully make expenditures from its general treasury funds in connection with a primary election held within the state of Michigan in 1954 to select candidates for Representatives in the Congress of the United States (Count 1) and in connection with a general election of a United States Senator and Representatives in Congress (Counts 2–4).

Each count charged the payment of a specified sum of money (ranging from $700 to $2,500) to a named company to defray the expenses of a political television broadcast over a named commercial television station in which the defendant union had no interest, urging and endorsing the selection of particular candidates. It was alleged that the telecasts included expressions of political advocacy and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

Each count also alleged that the money expended was taken out of the general fund of the

defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; and that the expenditure was not made from voluntary political contributions or from subscriptions by defendant's members.

The District Court dismissed the indictment on the ground that the expenditures alleged were not within the purview of the term "expenditures" as used in 18 U. S. C. 610. It stated that it was so construing the statute, in the light of the opinion of this Court in *United States* v. *C. I. O.*, 335 U. S. 106, in order to avoid serious questions as to the constitutionality of the statute (App., *infra*, pp. 17–32).

THE QUESTION IS SUBSTANTIAL

The result reached by the District Court, dismissing on its face an indictment which charges political broadcasts out of general union funds in support of particular candidates in a particular election, can be achieved only by a holding that *no* broadcast by a union, paid for by union funds, can ever be an expenditure under 18 U. S. C. 610, no matter what the amount expended, the degree of political advocacy involved, or the role of the union's broadcasts in the candidate's campaign. Such an interpretation is contrary to the plain language of the statute, and flies in the face of the legislative intent. It goes far beyond the

decision of this Court in *United States* v. *C. I. O.*, 335 U. S. 106, as to the area of political activity permitted to unions under the statute, and results in the almost complete elimination of the term "expenditure" from the law. The policy of construing a statute to avoid serious constitutional issues does not justify so complete a rewriting of the statute which Congress has enacted.

1. There can be little doubt that the language of 18 U. S. C. 610, prohibiting an "expenditure" by a labor union in connection with an election, can cover, on its face, expenditures for political broadcasts such as are here alleged, union broadcasts for the specific purpose of urging the electorate generally to vote for particular candidates. In view of the known importance of broadcasting in present political campaigns, and the fact that broadcasts are to the public at large, it is difficult to conceive of "expenditures" which could more directly amount to practical participation in the political campaigns of individual candidates than would at least some types of political broadcasts by unions or corporations. In short, the literal terms of the statute are certainly broad enough to cover the precise charge which has been made here.

2. The legislative history also shows that Congress intended its prohibition against expenditures to apply, at the very least, to some political broadcasts in direct support of specific candidates in an election. As the opinion of the Court

in the *C. I. O.* case points out (335 U. S. at p. 115), the term "expenditure" was inserted because the prohibition against a "contribution" had been thought to be confined to direct gifts or direct payments. To avoid circumvention of the congressional aim through indirect contributions, the statute was extended to prohibit expenditures. Political broadcasts in support of specific candidates paid for out of general funds may well amount to the equivalent of an actual contribution to the political campaign of a candidate, a type of indirect contribution which the term "expenditure" was specifically designed to reach.

That Congress intended some political broadcasts to come within the term "expenditures" was made clear during the debates on the Taft-Hartley Act, of which the section under consideration was originally a part. The direct question was put by Senator Pepper, 93 Cong. Rec. 6439–6440:

> * * * Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?
>
> Mr. TAFT. Yes.

Questions were then raised as to the use of radio time, normally paid for by a corporation to advertise its product, to advocate the election of a particular candidate. Senator Taft indicated that he thought there were matters of degree to be passed upon by the courts in the light of the particular facts. 93 Cong. Rec. 6439. In response to inquiries as to whether the proposed act would cover the guest appearance of a candidate on a radio program regularly sponsored by a union, Senator Taft said, 93 Cong. Rec. 6440:

> If a labor organization is using the funds provided by its members through payment of union dues to put speakers on the radio for Mr. X against Mr. Y, that should be a violation of the law.
>
> * * * * *
>
> * * * Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or a corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

The issue again arose during the debates, as follows, 93 Cong. Rec. 6447:

Mr. TAYLOR. * * * Take the matter of a radio program sponsored by either a union or a corporation. I think the AFL or the CIO, one or the other, has a news commentator who comments on the news. Could he comment on political candidates favorably or unfavorably?

Mr. TAFT. If the General Motors Corp. had a man speaking on the radio every week to advocate the election of a Republican or a Democratic Presidential candidate, the corporation ought to be punished, and it would be punished under the law. Labor organizations should be subject to the same rule.

Mr. TAYLOR. That is altogether different. It is a more subtle thing. When a commentator is broadcasting the news every day he can do a lot more good or harm to a man by coloring his broadcast and presenting it in the guise of a news commentary than he could openly.

Mr. TAFT. The Senator is right. It is a question of fact which would have to be raised in every case. Is it a contribution to a candidate or is it not? Possibly a knock is a boost sometimes. That argument might well be made by a person who was taking part in an election.

Thus, while it was recognized that there might be issues as to whether, under the facts of a particular case, a particular broadcast fell within the

prohibition of the statute, there was no doubt that the law was meant, by its interdiction against "expenditures," to cover some forms of political broadcasting by unions. Even the opponents of the measure recognized this purpose (93 Cong. Rec. 6523).

In the face of this clear congressional purpose, the District Court was not warranted in ruling on the face of the indictment, without waiting for the particular facts as to the broadcasts to be developed at the trial, that *no* broadcast by a labor union can amount to an expenditure. Such a reading cannot be supported either by the language or the legislative history of the statute.

3. In holding that the term "expenditure" cannot apply to any broadcast by a union in support of particular candidates in a particular election, the court below has stepped far beyond the confines of the opinion of this Court in *United States* v. *C. I. O.*, 335 U. S. 106. In the *C. I. O.* case, an editorial in support of particular candidates appeared in the regular C. I. O. newspaper which was part of the union's regular activities. The Court specifically noted that it did not "read the indictment as charging an expenditure by the CIO in circulating free copies to nonsubscribers, nonpurchasers or among citizens not entitled to receive copies"; and that the allegation of that

indictment that 1,000 extra copies had been run off "charges nothing more" than that the extra copies "were distributed in regular course to members or purchasers" (335 U. S. at pp. 111–112). On that construction of the indictment, the Court ruled that the political advocacy represented by the editorial was not an "expenditure" within the meaning of the statute, stating, 335 U. S. at p. 123:

> It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication.

From the face of the present indictment, no special facts appear to bring it within the *C. I. O.* case. The funds expended are alleged to have been out of general funds, not out of any special contributions or subscriptions, and the broadcasts were over a commercial television station in which the union had no interest and were addressed to the general public.

United States v. *Painters Local Union,* 172 F. 2d 854 (C. A. 2), although it involved a political broadcast over a commercial radio station and a political advertisement in a daily newspaper of general circulation, also differs from the instant case. There, the particular facts had been devel-

oped at a trial at which the defendants had been found guilty, and the Court of Appeals rendered its decision on the basis of the specific facts proved at the trial. The expenditures for the advertisement and broadcast were expressly authorized at a special membership meeting of the union and the amounts involved were very small. The court pointed out that "this small union owned no newspaper and a publication in the daily press or by radio was as natural a way of communicating its views to its members as by a newspaper of its own." 172 F. 2d at p. 856. Insofar as the ruling turned on these special facts, it is no authority for the dismissal of the indictment in this case, for no such facts appear in this indictment which concerns a very large union, affirmatively alleges that substantial amounts were expended for each broadcast, and avers that the union's purpose was to influence the general public. If the *Painters* case is interpreted as going beyond its own narrow facts and as holding that no broadcast by a union can amount to an expenditure within the meaning of 18 U. S. C. 610, then, for the reasons discussed above, we think that it is incorrect and should not be followed.[1]

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[1] The other decision relied upon by the court below, *United States* v. *Construction and General Lab. L. U.*, 101 F. Supp. 869 (W. D. Mo.), also turned on its special facts, the court apparently believing that the amounts involved were too small to amount to either a contribution or expenditure. Since there was a directed verdict of acquittal, the government could not appeal.

4. Appellee contended in the District Court, and undoubtedly will argue in this Court, that if the statute is construed to cover any political broadcasts by unions out of general funds it is unconstitutional under the First Amendment. We recognize that the policy of construing statutes so as to avoid issues of constitutionality is an important consideration in the interpretation of this enactment. However, the purpose to prohibit the use of general union funds to pay for at least some types of political broadcasts, *i. e.*, those which amount to an indirect contribution to the campaign of a political candidate, is so clear, both from the language and legislative history of the statute, that we do not think the court below was warranted in dismissing the instant indictment on its face. To do that, the court had to conclude that *no* political broadcast by a union can amount to an "expenditure" under the statute, a result which completely redrafts the Act which Congress has passed.[2]

CONCLUSION

It is respectfully submitted that the decision below is erroneous, that the question presented

[2] The considerations which support the constitutionality of the statute are discussed in the government's brief in the *C. I. O.* case (No. 695, O. T. 1947), and we do not endeavor to expand upon them here. The District Court did not reach the question of constitutionality, but merely adverted to the constitutional issues as justification for its construction of the statute.

is substantial, and that the Court should take jurisdiction of this appeal.

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MARCH 1956.

APPENDIX

APPENDIX

United States District Court Eastern District of Michigan Southern Division

No. 35004

UNITED STATES OF AMERICA, PLAINTIFF *v.* INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), DEFENDANT

OPINION OF THE COURT

Motion to dismiss the indictment in the above matter, each of its four counts alleging a separate violation of Section 610, Title 18 of the Code, (Federal Corrupt Practices Act) prohibiting political expenditures by labor unions. The pertinent section is set out in the appendix together with the Act's definitions of "expenditure" and "contribution". (Sec. 591).

Here the specific charge is that the "expenditure" violation came in connection with the selection of candidates for a senator and representative to the United States Congress during the 1954 primary and general elections. It is alleged that defendant paid a specific amount from its general treasury fund to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the costs of certain television broadcasts sponsored by the Union from commercial television station WJBK.

It is charged that the broadcasts urged and endorsed selection of certain persons to be candidates for representatives and senator to the

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Congress of the United States and included expressions of political advocacy intended by defendant to influence the electorate and to affect the results of the election.

It is further charged that the fund used came from the Union's dues, was not obtained by voluntary political contributions or subscriptions from members of the Union, and was not paid for by advertising or sales.

FINDINGS OF FACT

For the purposes of this motion the charges alleged are taken as true. United States v Jones, 207 F. 2d 785; Knoell v United States, 239 Fed. 16; United States v Van Auken, 96 U. S. 366.

The contention of defendant is, first, that the expenditures, admittedly so made, are not the type of expenditures intended to be covered and prohibited by Section 610 of the Act. Six other reasons for dismissing the indictment follow, and all are to the effect that should this court find that the expenditures made by defendant are covered by Section 610, then the provisions of that section are unconstitutional because—

(a) They abridge both freedom of speech and of the press, peaceable assemblage and right of petition, in violation of the First Amendment;

(b) They unlawfully abridge the right to choose senators and representatives in Congress as guaranteed by the Seventeenth Amendment;

(c) They create an arbitrary and unlawful classification and discriminate against

labor unions, in violation of the Fifth Amendment;

(d) They are arbitrary and capricious, and deprive defendant and its members of liberty and property without due process of law—in violation of the Fifth Amendment;

(e) The statute is vague and indefinite, in violation of the Fifth and Sixth Amendments; and finally

(f) The provisions invade the rights of defendant and its members, under the Ninth and Tenth Amendments.

It will be particularly noted that six of the seven reasons advanced for dismissing the indictment are based upon the alleged unconstitutionality of the law. Therefore it becomes our duty under the decisions to determine whether or not defendant's first objection is valid for if we are able to determine that the conduct complained against is not proscribed by the Act, without passing upon the law's constitutionality, we must do so. United States v C. I. O., 335 U. S. 106; United States v Petrillo, 332 U. S. 1, p 10; United States v Rumely, 345 U. S. 41–45; Crowell v Benson, 285 U. S. 22.

CONCLUSIONS OF LAW

In answer to that first objection we recall very briefly certain salient features in the history of the Federal Corrupt Practices Act. The first legislation of this type was enacted in 1907 and did not include labor unions in its prohibition; neither did it include the word "expenditure"

and as pointed out in Newberry v United States, 256 U. S. 232, it did not apply to "primaries". Admittedly it was not until 1947 that the word "expenditure" was written into the Act which then covered "primaries" and "contributions" of all kinds with a definition of the distinction noted between "expenditure" and "contribution". Since that final enactment (1947), which re-adopted the War Labor Disputes Act including unions and adding primaries, three tests and interpretations of what the law meant have been made, one by the Supreme Court of the United States, one by the Court of Appeals of the Second Circuit, and one by a District Court.

We examine those decisions.

UNITED STATES v. C. I. O. AND PHILIP MURRAY, 335 U. S. 106

The first interpretation of this statute (June 1948) was United States v. C. I. O. and Philip Murray, its president (335 U. S. 106). In that instance the C. I. O. had published a front page statement by Mr. Murray urging election of a certain congressional candidate in Maryland. This publication occurred in its regular C. I. O. News, a weekly, owned and published by the C. I. O. with money coming from the general funds of the Union (as in the case at bar) but with this additional feature; this particular issue of the News went not alone to the C. I. O. membership but extra copies were run off and distributed to the public.

On defendant's motion the District Court dismissed the indictment on the ground that the statute was unconstitutional as an unwarranted

abridgement of the First Amendment. On appeal the Supreme Court of the United States held that it had long been a policy that if the statute could be interpreted in a manner avoiding the constitutional question it should be, and the court, speaking through Mr. Justice Reed with these words, held that the prohibition in the Act against "expenditure" did not include an "expenditure" such as the one involved;

> "We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an 'expenditure in connection with any election' of candidates for federal office intended to outlaw such a publication."

Justice Frankfurter wrote a concurring opinion.

Four other Justices, however, with Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy, speaking through Mr. Justice Rutledge, agreed the indictment should be dismissed but on the ground that the entire section 313 (610) was unconstitutional. Meeting the question full on they said:

> "If section 313 as amended (610) • • • can be taken to cover the costs of any political publication by a labor union, I think it comprehends the 'expenditures' made in this case. By reading them out of the section, in order to pass upon its validity, the Court in effect abdicates its function in the guise of applying the policy against deciding questions of constitutionality unnecessarily. I adhere to that policy. But I do not think it justifies invasion of the legislative function by rewriting or emasculating the statute. This in

> my judgment is what has been done in this instance."

Mr. Justice Rutledge also notes that there is nothing in the Act as adopted that makes the "source" of the funds important. If the Union sponsored the "ad", it was immaterial whether the funds used came either through dues, from newspaper subscriptions, or a special fund raised for that purpose, although Senator Taft, who assumed the burden of defending this particular section in the Senate, differentiated between funds used from dues, and those subscribed for or raised for a certain special purpose. In that case also (C. I. O. News, supra) it was emphasized that the word "expenditure" was merely added to the Act to cover situations not previously included within the accepted legislative interpretation of "contribution". Justice Reed said—

> "Apparently 'expenditure' was added to eradicate the doubt that had been raised as to the reach of 'contribution,' *not to extend greatly the coverage of the section.*" (Emphasis ours.)

Therefore we find that when the first decision interpretive of this Act was announced by the Supreme Court of the United States one District Judge and four Justices of the Supreme Court had held the section unconstitutional and five Justices of the Supreme Court refused to pass upon its constitutionality as unnecessary, but nevertheless dismissed the indictment because it did not state a cause of action, to-wit, "expenditure" didn't include the type of "expenditure"

made by the Union, although authorized by its president.

It will also be noted that Mr. Justice Reed's majority opinion states that unless the legislation is so construed

> *"the gravest doubt would arise in our minds as to its constitutionality."* (Emphasis ours.)

UNITED STATES *v.* PAINTERS LOCAL UNION NO. 481, 172 F. 2D 854

The second case of interpretation was United States v. Painters Local Union No. 481, 172 F. 2d 854, decided by the Second Circuit Court of Appeals in 1949. The charge was against the Union and its President for placing and paying for a political ad in a *daily newspaper of general circulation and a political broadcast over a commercial radio station,* both out of funds from the general treasury of the Union.

In our opinion this case is on all fours with the case at bar except that it was a "television" broadcast instead of "radio"—which difference we do not deem important.

In Painters Local Union, supra, motion for dismissal by defendant was denied by the District Court which held the act constitutional. The question of whether these were "expenditures" within the meaning of the act was not raised by defendant nor discussed by the District Court and the case came to the Second Circuit supposedly solely on constitutional issues. Nevertheless that Court of Appeals reversed the District Court and, using the rationale of the Su-

preme Court in the C. I. O. opinion, supra, ruled on the scope of the statute and not on its constitutionality. It held that such political advertisements in a media of information commercially owned and of general circulation were no prohibited "expenditures". As Judge Hand stated—

> "It seems impossible, on principle, to differentiate the scope of that decision (referring to U. S. v C. I. O., supra) from the case we have before us."

We feel compelled to adopt that same language and repeat that the facts in United States v Painters Local Union No. 481, supra, and the matter before us are as alike as two peas in a pod.

Nor must we neglect to add that the Court of Appeals (Second Circuit) declared that it too had grave doubts concerning the constitutionality of the Act if the word "expenditure" were broadly construed.

It is interesting to note that here the government had a case made to order for appeal but no petition for certiorari was filed to the Supreme Court. See Mr. Justice Frankfurter's opinion—Andres v United States, 333 U. S. 740, at page 756, concerning a similar situation.

The government insists that a decision of the Second Circuit is not an authority we must follow. With this statement we agree. But District Courts have generally followed decisions of other Courts of Appeals which would decide the matter and where their own circuit had not yet spoken. King v United States, 10 F. Supp. 206; Flannery v United States, 25 F. Supp. 677;

The Bleakley No. 76, 56 F. 2d 1037. It is on the theory that such procedure is in the interest of promoting a single system for the administration of justice by having a uniform construction, and as stated in Martyn v United States, 176 F. 2d 609—

> "We would not be justified in adopting a different construction of the Act than that which prevails in the Fourth and Ninth Circuits unless we were able to demonstrate that that construction was clearly wrong."

UNITED STATES *v.* CONSTRUCTION & GENERAL LABORERS LOCAL UNION NO. 264, 101 F. SUPP. 869

The third and final decision interpreting Section 610 is United States v. Construction & General Laborers Local Union No. 264 and two officers, 101 F. Supp. 869, decided in 1951. It goes further than the case at bar. That indictment involved twelve counts and charged various kinds of "contributions or expenditures" by defendants contrary to the provisions of the Federal Corrupt Practices Act. In the case at bar there is no charge of "contribution" violation. The entire charge is devoted to "expenditure".

In General Laborers, supra, the government proved that the President, business agent of the Union, had been a candidate for Congress, that the Union had paid certain expenses connected with his campaign, and that three of the Union employees, two of whom were on the Union's regular payroll, had been very active in his support. On Union time and increased pay, they had put up posters, passed out cards and

pamphlets, driven voters to register and to the polls election day, and had managed the "Freedom Train", a replica of the original Freedom Train, the vans of which contained copies of historical American documents as well as their candidate's campaign literature. One man on Union pay had worked around the candidate's home cutting the grass and in one instance $200.00 was paid by the Union to some worker in connection with the candidate's campaign. There is no totalling up or reckoning of just how much money was expended directly or indirectly by the Union in this campaign but the court, rendering its opinion, stated—

> "* * * * it is hard to conceive that the Congress had in mind when it enacted this particular law, that an uncertain, insignificant amount such as is involved here should be considered as an expenditure and used as a basis for a criminal prosecution."

Here again the Court takes issue with the broad construction of the word "expenditure" urged by the government, adding

> "Reiterating, it is difficult for me to believe that the Congress, with its vast knowledge of the practical application of its acts, intended such a restriction as is sought to be placed upon labor unions as here."

However, the distinction made by the District Court in the General Laborers case, supra, that it is not the "type" of activity that Congress had in mind but the "degree" of activity that should govern, does not impress us. We do not find anything in this Act that is authority for such a

statement. The rule of de minimis non curat lex does not apply to criminal cases. United States v Construction and General Laborers (supra).

EFFECT OF THESE THREE DECISIONS

Having considered defendant's three authorities we find no case cited by the government otherwise interpreting this section of the Act, and its attempts to distinguish those cases from the case at bar are either futile or picayune. The government has, however, presently a very scholarly brief and advanced many arguments for denying the motion, tracing the history and objectives of this legislation from the first enactment of the Federal Corrupt Practices Act in 1907 when "money contributions" by corporations were prohibited, right down to the present amended version passed in 1947, where the word "expenditure" was added as a supplement to "contribution".

None of these three above cited cases, and surely not this court, challenges the right of Congress to pass any and all legislation deemed necessary to keep elections free from taint of fraud or coercion unless, of course, in those activities Congress violates provisions of the Constitution. Ex Parte Yarbrough, 110 U. S. 651; United States v Gradwell, 243 U. S. 476; Burroughs and Cannon v United States, 290 U. S. 534; United States v Classic, 313 U. S. 299.

That is not the point at issue. We can assume that Congress wrote the law it wanted and still we find that in all three cases interpreting that latest Congressional effort, the first before the Supreme Court of the United States, the second

before the Second Circuit Court of Appeals, and the third before a District Judge, each court determined that Congress did not intend to include as an expenditure the respective violations charged therein—in each case the same charges as here—and all Justices and Judges stated that in their opinion any other interpretation would bring into question the constitutionality of the section—a possible defense, incidentally, that they indicated would have a great deal of merit. And so anxious were the higher courts to avoid testing the constitutionality of the Act challenged in two of those three cited decisions, that they, of their own volition, changed the ground for sustaining the dismissal of the indictment to avoid the constitutional questions.

It is true that stress is laid in each of those three cases upon the alleged "triviality" of the charges; but, we ask, where is the line to be drawn? There is nothing in the Act that sets out any limit of demarcation of the amount expended before it becomes an "expenditure"; and this appears to this court to be very important. There is no minimum or maximum set on what is or is not "expenditure" and we believe that this court would be presumptuous in trying to write into the Act something that Congress avoided doing, evidently because what it enacted might be unconstitutional, or to indulge in a new theory of what is or is not an expenditure, not suggested by our higher courts.

According to the authorities the Union was not making an expenditure on behalf of a political candidate. It desired to inform its members and others of the position of the Union on those seek-

ing certain federal offices. It was exercising the right of free speech. The question then might present itself as to whether or not what the Union did was in fact "make a contribution". This might be important if the Union were charged with "making a contribution". It is not. It was so charged in United States v Construction & General Lab. L. U. No. 264, supra, on very similar facts, but still the court held that its acts did not encompass either a "contribution" or "expenditure".

What then did Congress intend by "expenditure"? At least one court has enumerated possible acts of "expenditure" under Sec. 610 but we will not attempt it. What we will say, however, is that the Congress did not intend to write an unconstitutional law. United States v C. I. O., supra, p. 120. And it has been pointed out in the three above cases and in the debates of Congress, that to interpret this statute otherwise than has been done, is to jeopardize not only the right of every newspaper to print any political editorial during a campaign in which federal officers are elected, advocating one adversary over another, but it may also make remarks or speeches of any delegate or representative to a convention or gathering (other than a political meeting) subject to this Act, where the expenses of that delegate are being paid for by a union or corporation. (See the three cases cited supra and Congressional Record of Debates.)

It is also well to know that the arguments so ably advanced by the government's briefs were all presented to the courts in the three above cases, and still the decision went against the gov-

ernment in each case. In fact, Mr. Warren Olney III, appearing before Congress admitted that the Act was very unsatisfactory and practically unenforcible. What possible justification could there be for this court to arbitrarily make, either an "addition" to the Act, or give it an "interpretation" which up to this day has not been attempted by either the Supreme Court of the United States, one of our Courts of Appeals or one of our District Judges? Undoubtedly there will be those who will not agree with the Supreme Court's interpretation of the word "expenditure" but it may well be that time will prove that the real intent of Congress, as stated and restated in the government's briefs, to-wit to destroy the power of any single group to control elections and to make more equal the forces which may battle for victory, will best be attained because of that interpretation. This has happened before.

CONCLUSION

As is our duty, we try to follow the law as laid down by our Supreme Court and there is no difficulty in doing so here. What the Supreme Court has said is not ambiguous to us.

If the District Judge can decide this case without ruling on the constitutional questions raised, he should do so. Since we believe that we can, we must not avoid our duty and make it necessary for the higher court to switch the grounds upon which the indictment must be dismissed. Our decision is that under the authorities the "expenditures" charged in this indictment are not expenditures prohibited by the Act. If appealed,

our Supreme Court may determine otherwise and may at that time decide upon the law's constitutionality or remand to us. Until the Supreme Court enlightens us further, we have no other alternative but to follow the above authorities.

An order, dismissing the indictment, may be presented for our signature.

[Sgd.] Frank A. Picard,
United States District Judge.

Dated: February 3rd, 1956.

APPENDIX [TO OPINION OF DISTRICT COURT]

Title 18 Federal Code Annotated, Section 591

> "The term 'contribution' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;
>
> "The term 'expenditure' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable;"

Title 18 Federal Code Annotated, Section 610

> "It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing officers, or for any

candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officers or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

United States District Court Eastern District of Michigan Southern Division

Indictment No. 35004. Viol: Title 18 USC (Rev.) Section 610 as amended

UNITED STATES OF AMERICA, PLAINTIFF, *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), DEFENDANT.

ORDER DISMISSING INDICTMENT

The above action having come on regularly to be heard on the 12th day of December, 1955, upon the motion of defendant to dismiss the in-

dictment and the said motion having been submitted on briefs, all counsel having waived oral argument, and the Court being fully advised in the premises and having on the third day of February, 1956, filed the Opinion of the Court wherein it is concluded that said motion should be granted and the indictment dismissed upon the ground that the expenditures charged in the indictment are not expenditures prohibited by law and that the indictment therefore fails to state facts sufficient to constitute an offense against the United States. Wherefore, it is

ORDERED, adjudged and decreed that the said action be, and the same hereby is, dismissed.

[s] Frank A. Picard,
District Judge

Dated: February 8, 1956.

Approved as to form.

[s] George E. Woods,
Chief Asst. U. S. Attorney

U. S. GOVERNMENT PRINTING OFFICE: 1956